

Amend 2 Cal. Code Regs. section 18312 as follows:

18312. Rulemaking Procedure.

(a) Definitions.

(1) Administrative Procedure Act: All references in this regulation to the "Administrative Procedure Act" are to the provisions of the "Administrative Procedure Act" that were in effect as of June 4, 1974 (former Government Code Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.).

(2) California Administrative Register: All references in this regulation to the "California Administrative Register" are to the California Administrative Register as set forth in Government Code Section 11409 as that section existed on June 4, 1974, or to any successor publication of the Office of Administrative Hearings, as defined in subdivision (a)(4) of this regulation.

(3) Notice: The notice of the adoption, repeal, or amendment of any Commission regulation shall include all of the following:

(A) A statement of the time, place, and nature of the proceedings;

(B) Reference to the authority under which the regulation is proposed and reference to particular code sections or other provisions of law which are being implemented, interpreted, or made specific;

(C) Either the express terms or an informational summary of the proposed action.

(D) A cost estimate prepared as prescribed by the Department of Finance.

(4) Office of Administrative Hearings: All references in this regulation to the "Office of

Administrative Hearings" are to the Office of Administrative Hearings as set forth in Government Code Sections 11371 et seq., as those sections existed on June 4, 1974, and to any state agency that succeeds the Office of Administrative Hearings, including the Office of Administrative Law.

(5) Regulatory Action: "Regulatory action" includes the adoption, repeal, or amendment of any Commission regulation.

(6) Trade or Industry Publication: "Trade or industry publication" includes the California Administrative Register.

(b) Adoption, Amendment, and Repeal of Regulations.

[Decision 1] (1) The Commission or Commission staff may hold a public meeting (an "interested persons" meeting) in order to solicit comment from the public on any topic within the jurisdiction of the Commission, or in advance of either the proposed pre-notice or adoption hearings on a proposed regulation. Notice of this meeting shall be advertised by means of a mailing (either in tangible form or electronically) to every person who has filed a request to be included on the applicable mailing list. At the discretion of the Commission, notice may be mailed to other persons or groups the Commission believes may be interested in the matter.

[Decision 2, Option A] ~~(1)-(2)~~ The Commission or Commission staff may, ~~at its discretion,~~ ~~hold~~ schedule a prenotice hearing on any regulation that will be the subject of Commission regulatory action in the future. The purpose of the prenotice hearing is to permit the Commission to consider and accept public comment regarding regulatory action proposed by the Commission staff. Any regulatory action to be considered at a prenotice hearing shall be publicized consistent with Government Code

1 Sections 11120-11132.

2 **[Decision 2, Option B]** ~~(1) The Commission may, at its discretion, hold a prenotice hearing~~
3 ~~on any regulation that will be the subject of Commission regulatory action in the future. The purpose of~~
4 ~~the prenotice hearing is to permit the Commission to consider and accept public comment regarding~~
5 ~~regulatory action proposed by the Commission staff. Any regulatory action to be considered at a~~
6 ~~prenotice hearing shall be publicized consistent with Government Code Sections 11120-11132.~~

7 ~~(2)~~ (3) At least 30 days prior to the adoption, amendment, or repeal of any regulation, notice
8 shall be provided as follows:

9 (A) Publication in a newspaper of general circulation or in a trade or industry publication as
10 prescribed by the Commission.

11 (B) Filing with the Rules Committee of each house of the Legislature.

12 (C) Mailing to every person who has filed a request for notice thereof with the Commission. At
13 the discretion of the Commission, notice may be mailed to other persons or groups the Commission
14 believes may be interested in the proposed action.

15 (D) Delivered to the Office of Administrative Hearings for publication in the next issue of the
16 California Administrative Register as prepared by that office.

17 The failure to mail notice to any person as provided in Section 11423 as that section existed on
18 June 4, 1974, shall not invalidate any action taken by the Commission.

19 ~~(3)~~ (4) The Commission shall consider the regulatory action on or after the date and time
20 designated in the notice, and shall afford interested persons an opportunity to comment. ***[Decision 3]***

1 Except as provided in subdivision (c), written comments will not be considered that are submitted to the
2 Commission later than [Subdecision 3A] [12:00p.m.][5:00 p.m.] of the business day preceding the
3 day of any hearing. Any regulatory action to be considered shall be publicized consistent with
4 Government Code Sections 11120-11132.

5 ~~(4)~~ (5) Where consideration of Commission regulatory action is continued to another meeting
6 date, notice of the change in date shall be posted on the door of the hearing room or announced at the
7 Commission meeting. No additional notice pursuant to subdivision (b)(2) of this regulation is required.

8 **[Decision 4]** (6) At any meeting the Commission may direct staff to hold additional [Tied to
9 Decision 1: Interested Persons Meetings,][Tied to Decision 2: Pre-notice Hearings,] or Adoption
10 Hearings on any given item.

11 ~~(5)~~ (7) Once the Commission has approved the adoption, repeal, or amendment of any
12 Commission regulation, the Commission shall submit to the Office of Administrative Hearings, for filing
13 with the Secretary of State, one certified copy of any regulation adopted, repealed, or amended with a
14 citation to the statutory authority pursuant to which the regulation was adopted, and four additional
15 copies of the regulation. The Commission shall also submit one certified copy of the regulation to the
16 Rules Committee of each house of the Legislature.

17 ~~(6)~~ (8) The Commission shall retain a rulemaking file pertaining to each Commission regulatory
18 action. The file shall contain the record of the hearing at which the Commission took the regulatory
19 action and other materials pertinent to the regulatory action.

20 **[Decision 5]** (c) Special Streamlined Process: The Commission [Subdecision 5A, or

Commission staff]] **[Subdecision 5B]** may/shall] assign specific regulatory matters to a streamlined process as described in this regulation. The streamlined process will consist of the following steps:

(1) The Commission will send out a notice of regulatory action consistent with subdivision (a)(3) and (b)(3) above. The notice shall specify that the regulation is being handled under the streamlined process.

(2) Written comments will be accepted during the 30-day notice period described in (c)(1) above. Those comments will become part of the rulemaking file and will be provided to the Commissioners prior to the adoption hearing.

(3) Staff will prepare an initial memorandum summarizing the regulation and the reasons supporting the regulation. This memorandum will be provided to Commissioners and will be made available to the public for the hearing designated for the adoption of the regulation.

(4) At the adoption hearing, additional written and oral comments are received. After all commentators have come forward at the public hearing, the record will be closed as of 5:00 p.m. that day. The Commission may, however, elect to keep the record open to allow for additional written comments on the proposed amendment.

(5)(A) Staff will prepare a second memorandum incorporating written and oral comments made at the adoption hearing specified in the notice. This memorandum will be presented to the Commission at the next scheduled meeting and adoption of the regulation will occur at the hearing on consent with no further public comment.

(B) Notwithstanding subdivision (5)(A) above, if the Commission directs substantive changes

1 to the proposal, staff will prepare a 15-day notice post-hearing notice. This notice will be delivered to
2 Commissioners, all persons who testified at the initial hearing or submitted written comments, and all
3 persons who request such a notice. This notice will provide that additional comments will be accepted
4 during the 15-day period.

5 ~~(c)~~ (d) Adoption of Emergency Regulations. The Commission may adopt, amend, or repeal
6 regulations on an emergency basis. The procedures set forth below, and not the procedures contained
7 in subdivision (b) of this regulation, shall apply to Commission emergency regulatory action.

8 (1) In order to adopt an emergency regulation, or to make an emergency amendment or repeal
9 of a regulation, the Commission shall make a written finding of emergency, which shall include a
10 statement of facts constituting the emergency and a statement that the Commission's regulatory action is
11 necessary for the immediate preservation of the public peace, health and safety, or general welfare.

12 (2) The Commission shall file a copy of the emergency regulation and the documents set forth in
13 subdivision (c)(1) of this regulation with the Office of Administrative Hearings, to be filed with the
14 Secretary of State, and shall file a copy with the Rules Committee of each house of the Legislature.

15 (3) Unless otherwise provided by the Commission in a written instrument filed with, or as part
16 of, the regulation or order of repeal, any emergency regulatory action shall become effective upon filing
17 and shall remain in effect for 120 days.

18 (4) The Commission may make the emergency regulation, amendment, or repeal permanent
19 pursuant to subdivision (b) of this regulation. Where the Commission makes an emergency regulatory
20 action permanent pursuant to subdivision (b) of this regulation prior to the expiration of the 120 days set

1 forth above, the Commission shall transmit to the Office of Administrative Hearings and the Rules
2 Committee of each house of the Legislature a certification that the action has been made permanent.

3 ~~(d)~~ (e) Review by the Office of Administrative Hearings.

4 (1) The Office of Administrative Hearings shall review any Commission regulation subject to
5 Commission regulatory action for compliance with the form and style requirements of the Secretary of
6 State.

7 (2) If the Commission's regulatory action complies with the prescribed form and style
8 requirements of the Secretary of State, the Office of Administrative Hearings shall file the regulation,
9 amendment, or repeal promptly with the Secretary of State.

10 ~~(e)~~ (f) Effective Date of Commission Regulatory Actions.

11 (1) Commission regulatory actions shall become effective 30 days after filing with the Secretary
12 of State, except for the following:

13 (A) Where the Commission provides in a written instrument filed with, or as part of, the
14 regulation or order of repeal, a specific effective date, the regulatory action shall be effective on that
15 date.

16 (B) Any emergency regulatory action shall become effective upon filing with the Secretary of
17 State and the Rules Committee of each house of the Legislature pursuant to subdivision (c)(2) of this
18 regulation, unless subdivision (e)(1)(A) of this regulation applies.

19 (C) Regulations prescribing the Commission's organization or procedures shall become
20 effective upon filing with the Secretary of State, unless subdivisions (e)(1)(A) or (e)(1)(B) of this

1 regulation apply.

2 COMMENT: On March 6, 1991, in the case of Fair Political Practices Commission v. Office of
3 Administrative Law and Linda Stockdale Brewer, Sacramento County Superior Court, Case No.
4 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924 [unpub.
5 opn.]), the court determined that the Fair Political Practices Commission's procedures for adopting,
6 amending, or repealing regulations are subject only to those provisions of the Administrative Procedure
7 Act in effect on June 4, 1974, which was the date on which the voters adopted the Political Reform Act
8 of 1974. This regulation is therefore based on the requirements of the provisions of the Administrative
9 Procedure Act existing on that date. On June 4, 1974, the pertinent provisions of the Administrative
10 Procedure Act were located in former Government Code, Title 2, Division 3, Part 1, Chapter 4.5,
11 Sections 11371 et seq.

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13 NOTE: Authority cited: Sections 81014 and 83112, Government Code.
14 Reference: Sections 11371 et seq., Government Code, as those sections existed on June 4, 1974;
15 Sections 81013, 81014, and 83112, Government Code; Fair Political Practices Commission v. Office
16 of Administrative Law and Linda Stockdale Brewer, Sacramento County Superior Court, Case No.
17 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924 [unpub.
18 opn.]).
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